

DELTA-MENDOTA CANAL UNIT

**ENVIRONMENTAL ASSESSMENT
LONG-TERM CONTRACT RENEWAL**

**Chapter 4
Other Considerations**

February 2005

CHAPTER 4

OTHER CONSIDERATIONS

This section discusses other analyses typically required by or included in NEPA documents. It includes a review of potential environmental justice impacts, irreversible and irretrievable commitments of resources, and Indian trust assets.

ENVIRONMENTAL JUSTICE

As mandated by Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, this EA addresses potential environmental justice concerns. The Executive Order requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.¹ In August 1994, the Secretary of the Interior issued an environmental justice policy statement directing departmental action resulting in the Department of the Interior's Strategic Plan for Environmental Justice (http://www.doi.gov/oepe/ej_goal1.html).

Renewal of the long-term water service contracts between Reclamation and the water contractors within the DMC Unit will not involve the construction of new facilities, result in any known health hazards, cause the generation of any hazardous wastes, or result in any property takings. Moreover, renewal of these DMC Unit contracts will not directly or indirectly cause disproportionately high and direct or indirect adverse human health or environmental effects. In examining impacts to the study area as a whole, it could be determined that renewal of the long-term water service contracts would not disproportionately affect the human health or physical environment of minority or low-income populations. To the extent that long-term renewal of DMC Unit contracts for CVP water have the potential to disproportionately affect the economic conditions of certain communities within or affected by CVP water deliveries, such agricultural and socioeconomic effects are discussed in Section 3.2 and 3.3 of this EA.

¹ Executive Order 12898 specifically states that “[t]o the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.”

IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES

As discussed further in Section 3.11, Cultural Resources, compliance with Section 106 of the National Historic Preservation Act and other federal rules and regulations could be required for new undertakings (for example, if substantial new lands are to be incorporated within district boundaries [inclusions] or land use changes are proposed involving use of federally contracted water). Section 106 and the other relevant federal rules and regulations are designed to ensure that all eligible and potentially eligible archaeological or historical sites are adequately inventoried. “Inventory” includes the identification, evaluation in relation to NRHP eligibility criteria, and assessment of effects in relation to proposed project impacts. As a consequence, implementation of treatments recommended in the Section 106 consultation and the related process results in reducing to less-than-adverse levels the impacts that a project might have on eligible or potentially eligible archaeological or historical sites. By definition, reducing impacts to less-than-adverse levels implies that there would be no irreversible or irretrievable commitments of cultural resources. No other irreversible or irretrievable commitments of resources resulting from the renewal of long-term contracts were identified for any of the other resources analyzed in this EA.

INDIAN TRUST ASSETS

DEFINITION OF INDIAN TRUST ASSETS

The United States has a trust responsibility to protect and maintain rights reserved by or granted to federally recognized tribes and individual Indians, by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. The trust responsibility requires that all federal agencies, including Reclamation, take all actions reasonably necessary to protect Indian Trust Assets (Reclamation 1994).

Indian Trust Assets are legal interests in property held in trust by the federal government for federally recognized Indian tribes or individual Indians. “Assets” are anything owned that has monetary value. “Legal interest” means there is a property interest for which there is a legal remedy, such as compensation or injunction, if there is improper interference. Indian Trust Assets do not include things in which a tribe or individual Indians have no legal interest (Reclamation 1994).

Indian Trust Assets can be real property, physical assets, or intangible property rights, such as a lease or a right to use something. Indian Trust Assets cannot be sold, leased, or otherwise alienated without approval by the United States. While most Indian Trust Assets

are located on reservations, they can also be located off reservations. Examples of Indian Trust Assets are land, minerals, hunting and fishing rights, water rights, and instream flows. Off-reservation cultural resources located on non-trust land are usually not Indian Trust Assets (Reclamation 1994).

INDIAN TRUST ASSETS ANALYSIS

Reclamation examined geographic information system coverage that depicts the distribution of trust land in the Mid-Pacific Region. No trust lands were found within the DMC Unit study area. The nearest trust lands to the DMC Unit study area are located 45 to 65 air miles east and south of the study area. These trust lands belong to the Big Sandy Rancheria, Buena Vista Rancheria, Chicken Ranch Rancheria, Cold Springs Rancheria, Northfork Rancheria, Picayune Rancheria, Santa Rosa Rancheria, Sheep Ranch Rancheria, Table Mountain Rancheria, and Tuolumne Rancheria . The Ione Rancheria and California Valley Mi-wok, although federally recognized, do not possess trust land.

Departmental Manual Part 512, Chapter 2, Departmental Responsibilities for Indian Trust Resources requires Reclamation to “identify any impacts of Departmental plans, projects, programs or activities on Indian trust assets, or tribal health and safety.” Reclamation can identify no causal link between the proposed execution of the DMC Unit long-term contract renewals and impacts to Indian trust assets.

The Hoopa Valley Tribe (located on the Trinity River) has informed Reclamation that the Tribe finds that other long-term contract renewal environmental documents inadequately address the potential effects on Indian Trust Assets caused by such renewals. In particular, the Tribe cites that such renewals will adversely affect Reclamation’s obligation in the Trinity River Restoration Record of Decision to maintain flows at levels mandated in the Record of Decision. Reclamation’s subject matter experts find no adverse causal link between the renewal of the DMC Unit long-term contracts and the Tribe’s ability to exercise its federally reserved fishing rights or Reclamation’s obligation under the Trinity River Restoration Record of Decision to maintain flows at the mandated levels. The rationale is that (1) flow requirements on the Trinity River are determined by hydrologic conditions in the Trinity Basin and are unrelated to water demands south of the Delta, (2) the system-wide effects of implementing fishery restoration on the Trinity River were the subjects of the environmental impact statement for the Trinity River Mainstem Fishery Restoration and the CVPIA PEIS and are assumed to be in place for all of the alternatives considered in this EA, and (3) Reclamation’s trust responsibility is documented in the consultations for the Trinity EIS/EIR and the CVP Operations Criteria and Plan biological assessment-biological opinion.

In conclusion, Reclamation believes there is no interrelationship or interdependency between the Trinity River Mainstem Fishery Restoration and the proposed DMC Unit long-term contract renewals. The exercise of the provisions in those contracts is not dependent on the Trinity River Mainstem Fishery Restoration activities, and the restoration activities are not dependent on the execution or non-execution of the DMC Unit long-term contracts renewals.